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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF
WEST VIRGINIA

) Case No. 1:10-cv-00879-MRB-SKB

)
)
) Hearing Date: December 2, 2014
) Time: 12:30 p.m.

) Place: Courtroom 750, 7th Floor

)))))

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87). Now that Plaintiffs are settling this action, they have completely discarded all class claims for damages in favor of injunctive relief only.

For several reasons, Plaintiffs' wholesale abandonment of the suit's damage component is fundamentally unfair to absent class members. To begin, the average class member will conclude that all claims relating to deceptive product labeling are being resolved by this action. Moreover, it is highly doubtful that another class action firm will be willing to file a new case for damages only. In contrast, the few class members who will read and comprehend the long-form notice will wrongly conclude they are not releasing any damage claims for premiums paid during the class period. Contrary to their belief, the class representatives have agreed to "release and discharge all injunctive, declaratory, or *equitable* claims that have been brought, could have been brought, are currently pending, or ever brought in the future *by any Class Member ****" (Settlement Agreement, para. 40).

Among the claims expressly waived on behalf of the class is Plaintiffs' *equitable claim* for unjust enrichment set forth in Count III of the complaint. The elimination of this equitable claim for damages leaves Ohio's consumer fraud statutes as the only bases of liability. The waiver of an important theory of economic recovery: (i) betrays Plaintiffs' adequate representation of the class, (ii) renders the class notice inadequate, and (iii) exposes the class settlement's fundamental unfairness.

2. *Unreasonable Attorneys' Fees*

Although Plaintiffs' fee request falls below class counsel's purported lodestar, they freely concede that the main indicator of fairness is the *benefit obtained* for class members. This concession dooms their petition. As noted above, Plaintiffs are completely abandoning their claims for economic recovery. Neither were they able to persuade Defendants to reduce the prices of the affected products according to the premium paid for their deceptive labeling. Now that Defendants

have built a strong and loyal customer base for these products, the cosmetic labeling changes required by the Agreement are not likely to impact future sales. The cumulative effect of the foregoing factors is to render the "benefits" touted by Plaintiffs *illusory*. To award the fee requested by class counsel under such circumstances would be an abuse of discretion. Counsel for Objectors serves notice of his intent to attend the fairness hearing scheduled for December 2, 2014.

CONCLUSION

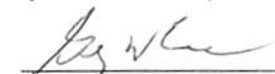
For the foregoing reasons, Objectors respectfully request that the Court:

- (1) Reject the proposed settlement as presented;
- (2) Refuse to enter final judgments dismissing class claims against Defendants with prejudice;
- (3) Deny the motion for attorneys' fees as presented;
- (4) Order an amended notice of proposed settlement.

Respectfully Submitted,

Bradley L. Henry
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By their attorney,



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Certificate of Service

The undersigned hereby certifies that the foregoing document was filed by ordinary U.S. mail on October 31, 2014 to the following addresses:

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